

**REMARKS**

In the present Amendment, claim 19 has been amended to more specifically recite the steps. These amendments are supported by the specification, for example, page 10, lines 15 to 19; page 11, line 21 to page 12, line 4; page 15, line 16 to page 16, line 14; and Example 10. New claim 21 has been added. Claim 21 is supported by the specification, for example, page 15, line 14 to page 16, line 5; page 16, lines 15 to 20; page 11, line 21 to page 12, line 4; page 12, lines 5 to 12; and the Examples. Claims 8, 9 and 13 have been amended to change their dependency to claim 21. In addition, claims 8 and 9 have been amended to be consistent with claim 21. Claim 15 has been amended to correct a typographical error. Claims 10-12, 16-18 and 20 have been canceled without prejudice or disclaimer. Claims 1-7 were previously canceled. No new matter has been added.

Applicant respectfully submits that entry of the amendments, after final, is proper, at least because they place the application either in condition for allowance or in better form for appeal. See M.P.E.P. § 714.12. Upon entry of the Amendment, claims 8, 9, 13-15, 19 and 21 will be all the claims pending in the application.

**I. Response to Rejection under 35 U.S.C. § 102(b)**

Claims 8-18 and 20 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,358,495 to Nishihama et al., as evidenced by Encarta® World English Dictionary, North American Edition, © and (P) 2009.

As noted above, independent claim 20 has been canceled and claims 8, 9 and 13-15 now depend from new independent claim 21, directly or indirectly. Applicant respectfully submits that claims 8, 9, 13-15 and 21 are novel and patentable over Nishihama et al., as evidenced by Encarta®, for at least the following reasons.

Independent claim 21 recites a stick type cosmetic comprising a porous material which comprises at least a pigment, an extender material and a ceramics which have pores of a diameter falling in a range of 50 nm to 500 nm and which bind with the pigment and the extender material.

When the cosmetic of the presently claimed invention is applied to skin, it breaks and expands a coloring agent on the skin, and is excellent in coloring property on the skin (due to non-sintering), but usually keeps a stick shape (due to good mechanism strength).

Nishihama et al. discloses a lipstick (a stick type cosmetic) having protective ability of UV which is produced with cooling and solidifying a mixture obtained by dissolving the titanium-silica complex and other ingredients of wax, resin, oils, coloring agent etc. with heating (Formulation Example 4). That is, the lipstick described in Nishihama et al. is not a stick type cosmetic in which a pigment, an extender material and a porous material having a pore diameter of 50 nm to 500 nm form a skeleton.

Moreover, the stick type cosmetic in the presently claimed invention is not obtained by sintering at high temperature (Comparative Examples 1 to 3) or cooling and solidifying ingredients (Comparative Example 4).

Encarta<sup>®</sup> is cited as defining the diameter of a mesopore and thus does not rectify the above noted deficiencies of Nishihama et al.

In view of the foregoing, Applicant respectfully submits that claim 21 is patentable over Nishihama et al. Additionally, claims 8, 9 and 13-15 depend from claim 21, directly or indirectly, and thus are patentable over the cited reference at least by virtue of their dependency.

**II. Conclusion**

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned at his earliest convenience.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: April 23, 2010

By: 

Fang Liu, Ph.D.

Registration No. 51283

**Customer No. 21839**  
703 836 6620